

BEFORE THE
Federal Communications Commission
WASHINGTON, D.C.

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In the Matter of)
)
Implementation of the)
Telecommunications Act of 1996)
)
Amendment of the Rules Governing)
Procedures to Be Followed When)
Formal Complaints Are Filed)
Against Common Carriers)
)
Accelerated Docket for)
Complaint Proceedings)

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

CC Docket No. 96-238

COMMENTS OF
THE ASSOCIATION OF DIRECTORY PUBLISHERS

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January 12, 1998

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**COMMENTS OF
THE ASSOCIATION OF DIRECTORY PUBLISHERS**

The Association of Directory Publishers ("ADP"),¹ by its attorneys, hereby submits its Comments in the above-captioned proceeding.²

¹ ADP is a one hundred year-old international trade association representing the interests of "independent" telephone directory publishers, that is, publishers of white and yellow pages telephone directories that compete with the Regional Bell Operating Companies and other local exchange carriers ("LECs") in the sale of telephone directory advertising (primarily yellow pages classified advertising). ADP's more than 175 member publishers produce telephone directories serving communities throughout the United States.

² Common Carrier Bureau Seeks Comment Regarding Accelerated Docket For Complaint Proceedings, CC Docket No. 96-238, Public Notice, DA 97-2178 (rel. Dec. 12, 1997) ("Notice").

1. NEED FOR ACCELERATED DOCKET.

ADP strongly supports the Commission's efforts to expedite the process of resolving complaints against common carriers. Anticompetitive motives induce resistance to the terms of the 1996 Telecommunications Act resulting in litigation over each phase in the development of competition. Because delay in implementation of the 1996 Act favors incumbency and harms the development of competition, the success of these obstructionist strategies is fostered by lengthy complaint resolution processes. The Commission's accelerated docket proposals will reduce the effectiveness of litigation-delaying tactics and promote realization of the 1996 Act's goals. This is especially true with respect to the LECs' provision of subscriber list information to competing telephone directory publishers which is an area in which LECs have long employed anticompetitive and self-serving dilatory tactics.

Lengthy complaint resolution involves two types of costs: (1) the opportunity costs imposed by anticompetitive or discriminatory conditions in the market pending resolution of the complaint; and (2) discovery and other direct costs of litigation. The Notice seeks to remedy both.

The accelerated nature of the process will reduce the time in which the opportunity costs of discriminatory behavior are imposed on the marketplace. For example, one independent directory publisher, Direct Media, filed a lawsuit in federal court in July 1996 alleging, inter alia, that the incumbent LEC

demanded unreasonable rates for telephone directory listings. Over a year and a half later, the dispute remains unresolved. In fact, the issue of reasonableness of telephone directory listing rates was only recently referred by the court to the Commission.³ The Commission could facilitate competitive provision of directory listings through expedited consideration of this complaint.

That Direct Media entered a lawsuit is noteworthy. The substantial expense of dispute resolution encourages small businesses such as independent directory publishers to accept less than satisfactory terms and rates from incumbent carriers. Consequently, fewer competitors enter the market. Moreover, those small businesses that do enter the market are subject to unfavorable rates and terms from the incumbent and, therefore, are often not able to offer consumers the savings and variety of offerings they would otherwise realize. Indeed, ADP's Comments in the CPNI/SLI rulemaking (CC Docket No. 96-115) contain numerous examples of anticompetitive behavior by LECs concerning the provision of subscriber listing information.

Small businesses operate under very limited budgets and thus have limited resources to devote to dispute resolution. Consequently, they are especially in need of a meaningful forum for inexpensive dispute resolution. The streamlined nature of

³ See Direct Media v. Camden Tel. and Tel. Co., Civ. Action No. CV296-108, Order at 18 (S.D. Ga. Dec. 2, 1997).

the accelerated docket, such as the discovery proposals and the greater reliance on hearings, will reduce the direct costs of litigation and generate the attending competitive benefits. Moreover, by reducing the costs of dispute resolution, the accelerated docket proposal is consistent with the Section 257 directive to eliminate entry barriers for small businesses.⁴

CONCLUSION

For the foregoing reasons, ADP respectfully urges the Commission to adopt without delay a mechanism for the accelerated resolution of complaints against common carriers.

Respectfully submitted,

**THE ASSOCIATION OF
DIRECTORY PUBLISHERS**

A handwritten signature in dark ink, appearing to read 'Theodore Case Whitehouse', is written over a horizontal line.

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⁴ See 47 U.S.C. § 257.

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Washington, DC

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OFFICE OF THE SECRETARY

In the Matter of)
)
JAMES A. KAY, JR.) WT DOCKET NO. 94-147
)
)
Licensee of 152 Part 90 Stations in the)
Los Angeles, California Area)

To: Honorable Richard L. Sippel
Administrative Law Judge

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WIRELESS TELECOMMUNICATIONS BUREAU'S
PARTIAL OPPOSITION TO NOTICE OF DEPOSITION
(CHRISTOPHER KILLIAN)

1. The Chief, Wireless Telecommunications Bureau, by his attorneys, and pursuant to Section 1.315(b)(1) of the Commission's Rules, now partially opposes the "Notice of Depositions Duces Tecum" served upon Christopher Killian (Killian) by James A. Kay, Jr. (Kay) on January 7, 1998.

2. The Bureau objects to paragraph (g) of Kay's deposition notice, in which Kay proposes to depose Killian on "the witness' FCC licenses and his compliance with the FCC's rules and regulations . . ." The Presiding Judge has repeatedly admonished Kay that this subject has no relevance to this proceeding and is not a proper subject for this deposition. The Bureau originally notice Mr. Killian for a deposition on November 6, 1997. Killian objected to the deposition notice on November 13, 1997 and asked, inter alia, that Kay's right of cross-examination be eliminated or limited. Although Section 1.315(b)(2) of the

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Commission's Rules gave Kay the opportunity to respond to Killian, Kay filed nothing. The Bureau filed a pleading in which it expressed the opinion that Kay's right to cross-examine Killian should not be eliminated. In his Order, FCC 97M-195 (released November 26, 1997), the Presiding Judge ruled:

Also, Kay has filed an unrelated Petition for Institution of License Revocation Proceedings asking for Commission proceedings against licenses of Killian or Killian affiliates (Carrier, Nextel). Those Killian licenses have no relevance in this case. Kay is not authorized to ask questions about those Killian related licenses at the Killian deposition noticed by the Bureau in this case.

Although Kay never filed any response to Killian's opposition, he then filed on December 1, 1997, a "Request for Leave to Appeal Or, in the Alternative, for Clarification of Discovery Procedures" in which he argued for the first time that he should be allowed to depose Killian on the subject of Killian's licenses and Kay's revocation petition. Although the Presiding Judge acknowledged that Kay's pleading was not in compliance with the Commission's Rules, he considered Kay's petition on the merits. At the prehearing conference on December 4, 1997, the Presiding Judge stated:

JUDGE SIPPEL: Now, what would you be concerned about, and I've already made my ruling with respect to that petition, finding that the petition is just off limits. I mean, that's not going to be --

MR. GEHMAN: Okay, that's --

JUDGE SIPPEL: There will be no questions asked on the petition.

Tr. 332. That ruling was confirmed in the Presiding Judge's Order, FCC 97M-199 (released December 8, 1997).

3. Clearly, it has been established as the law of the case that Kay's revocation petition and Killian's compliance with the Commission's Rules are not relevant to this proceeding and are not proper subjects for a deposition. Kay's attempt to reopen an issue that has already been twice considered and decided is improper. There is simply no reason the Presiding Judge or the parties should be required to endlessly rehash a matter on which Kay has heretofore had ample opportunity to be heard. The Presiding Judge should summarily rule that Kay may not depose Killian on the subjects of Killian's FCC licenses and Killian's compliance with the FCC's rules and regulations.¹

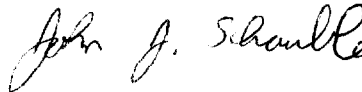
¹ The Bureau also objects to Paragraph (b) of Kay's notice to the extent that paragraph could be interpreted as authorizing a wide-ranging inquiry into Killian's business and its compliance with the Commission's Rules. The Bureau has no objection to a limited amount of inquiry into Killian's background, but the issues in this proceeding involve Kay's business, not Killian's business.

4. Accordingly, the Bureau asks the Presiding Judge to reaffirm his prior rulings that Kay may not depose Killian on the subjects of "the witness' FCC licenses and his compliance with the FCC's rules and regulations."

Respectfully submitted,
Daniel B. Phythyon
Chief, Wireless Telecommunications Bureau



Gary P. Schonman
Chief, Compliance and Litigation Branch
Enforcement and Consumer Information Division



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January 12, 1998

CERTIFICATE OF SERVICE

I, John J. Schauble, an attorney in the Enforcement and Consumer Information Division, Wireless Telecommunications Bureau, certify that I have, on this 12th day of January, 1998, sent by first class mail, copies of the foregoing "Wireless Telecommunications Bureau's Partial Opposition to Notices of Deposition" to:

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